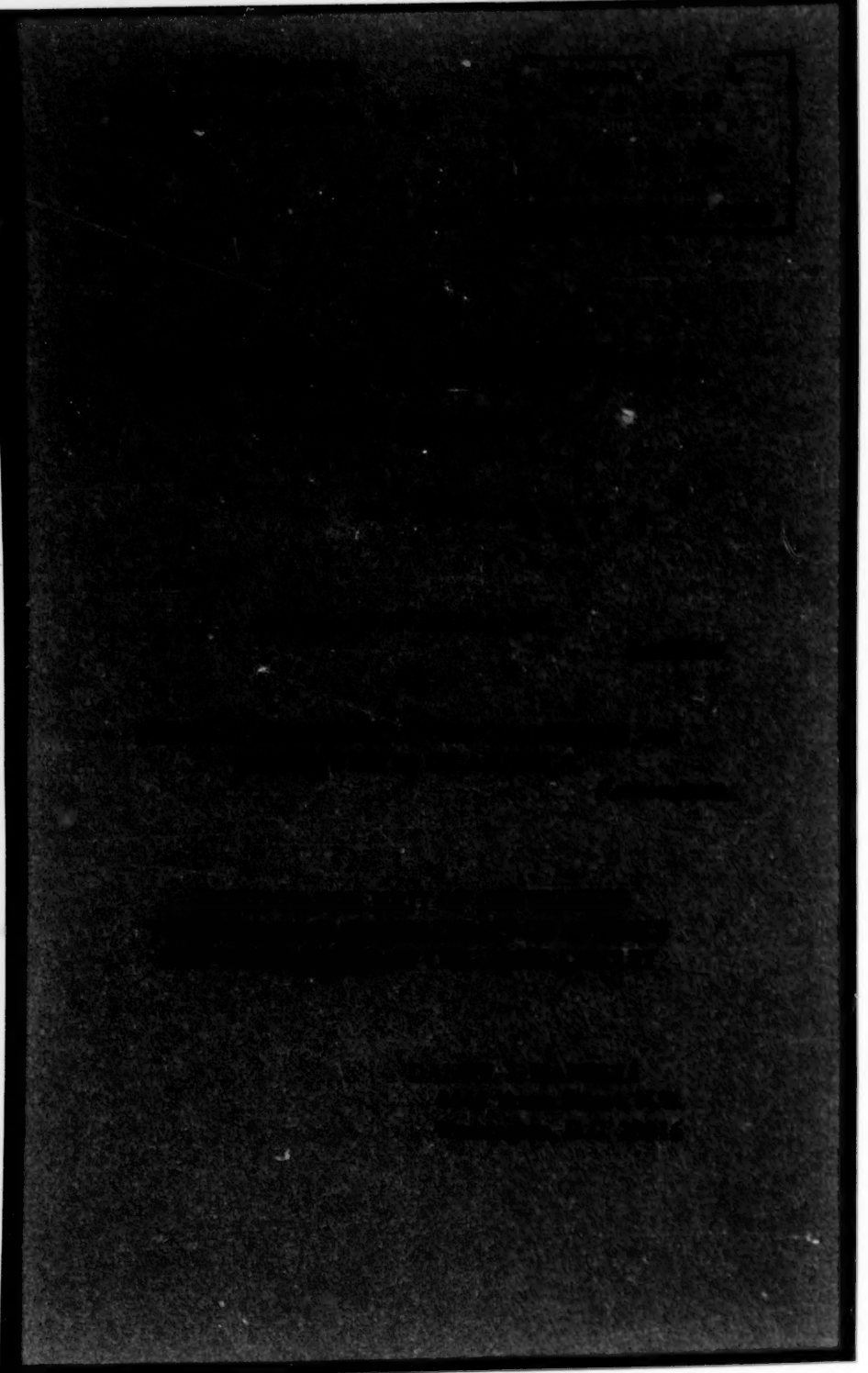

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No.

ACCURACY IN MEDIA, INC.,

Petitioner,

v.

FEDERAL COMMUNICATIONS COMMISSION, and
UNITED STATES OF AMERICA,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

Petitionier, Accuracy In Media, Inc. (AIM), respectfully prays that a writ of certiorari issue to review the order of the United States Court of Appeals for the District of Columbia Circuit entered in this proceeding on October 16, 1975.

OPINIONS BELOW

The Memorandum Opinion and Order of the Federal Communications Commission (Commission or FCC) is reported at 43 F.C.C.2d 851 (1973), and is reprinted in the appendix to

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this petition (App., p. 1a). The opinion and judgment of the Court of Appeals, review of which is sought, is reported at 521 F.2d 288 (App., p. 15a).

JURISDICTION

The judgment and order of the Court of Appeals was entered on October 16, 1975. This Court has jurisdiction under the provisions of 28 U.S.C. § 1254(1).

QUESTIONS PRESENTED

1. Whether the FCC has jurisdiction to enforce Section 396(g)(1)(A) of the Communications Act of 1934 against the Corporation for Public Broadcasting?

2. Whether the decision of the Court of Appeals affirming the Commission's decision to reject jurisdiction over the Corporation for Public Broadcasting is in direct conflict with the provisions and legislative intent of the Communications Act of 1934?

3. Whether the decision of the Court of Appeals is in conflict with the principles of broadcast regulation established by this Court in *FCC v. Pottsville Broadcasting Co.*, 309 U.S. 134 (1940); *U.S. v. Southwestern Cable Co.*, 392 U.S. 157 (1968); and *Red Lion Broadcasting Co. v. F.C.C.*, 395 U.S. 367 (1969).

STATUTORY PROVISIONS INVOLVED

United States Code, Title 28: § 2342(1)

Jurisdiction of Court of Appeals

The court of appeals has exclusive jurisdiction to enjoin, set aside, suspend (in whole or in part), or to determine the validity of–

> (1) all final orders of the Federal Communications Commission made reviewable by section 402 (1) of title 47;

United States Code, Title 47: § 151

Purposes of Act; Creation of Federal Communications Commission

For the purpose of regulating interstate and foreign commerce in communication by wire and radio so as to make available, so far as possible, to all the people of the United States a rapid, efficient, nation-wide, and world-wide wire and radio communication service with adequate facilities at reasonable charges, for the purpose of national defense, for the purpose of promoting safety of life and property through the use of wire and radio communications, and for the purpose of securing a more effective execution of this policy by centralizing authority heretofore granted by law to several agencies and by granting additional authority with respect to interstate and foreign commerce in wire and radio communication, there is hereby created a commission to be known as the "Federal Communications Commission," which shall be constituted as hereinafter provided, and which shall execute and enforce the provisions of this Act.

United States Code, Title 47: § 312(b)

Administrative Sanctions

(b) Where any person (1) has failed to operate substantially as set forth in a license, or (2) has violated or failed to observe any of the provisions of this Act, or (3) has violated or failed to observe any rule or regulation of the Commission authorized by this Act or by a treaty ratified by the United States, the Commission may order such person to cease and desist from such action.

United States Code, Title 47: § 396(g)(1)(A)

Purposes and Activities of the Corporation

(1) In order to achieve the objectives and to carry out the purposes of this subpart [this section], as set out in subsection (a), the Corporation is authorized to–

> (A) facilitate the full development of educational broadcasting in which programs of high quality, obtained from diverse sources, will be made available to noncommercial educational television or radio broadcast stations, with strict adherence to objectivity and balance in all programs or series of programs of a controversial nature;

United States Code, Title 47: § 398

Federal Interference or Control Prohibited

Nothing contained in this part [47 USC §§ 390-399] shall be deemed (1) to amend any other provision of, or requirement under this Act; or (2) to authorize any department, agency, officer, or employee of the United States to exercise any direction, supervision, or control over educational television or radio broadcasting, or over the Corporation or any of its grantees or contractors, or over the charter or bylaws of the Corporation, or over the curriculum, program of instruction, or personnel of any educational institution, school system, or educational broadcasting station or system.

STATEMENT OF THE CASE

On October 16 and November 20, 1971, Petitioner (AIM) filed two complaints with the FCC alleging that two programs funded by the Corporation for Public Broadcasting (hereinafter Corporation, or CPB), and distributed by the Public Broadcasting Service (PBS), violated both the Fairness Doctrine and the "objectivity and balance" standard mandated by Section 396 (g)(1)(A) of the Communications Act of 1934 (Act).

The FCC, by a letter ruling dated January 23, 1973 (reported

at 39 FCC 2d 416) ruled that the Fairness Doctrine had not been violated. The Commission did not, however, determine whether the programs were in compliance with Section 396 (g)(1)(A) of the Act. It stated that this determination was a matter of "considerable doubt, particularly in light of the caution in Section 398 [of the Act]" which provides, among other things, that nothing contained in Sections 390 through 399 shall be deemed to authorize any agency of the United States to exercise "direction, supervision, or control" over educational television broadcasting or over the Corporation. The Commission invited comments from interested parties as to its authority to enforce the standards contained in Section 396 (g)(1)(A) of the Act (39 F.C.C.2d 416, 420 & n.1).

Additional submissions were made to the Commission, as requested, by Petitioner and others, on the question of whether the Commission had jurisdiction to "reach a separate conclusion under Section 396 (g)(1)(A)."

On November 15, 1973, the Commission ruled that it did not have jurisdiction to enforce the provisions of Section 396 (g)(1)(A) of the Act inasmuch as it was precluded from doing so by the provisions of Section 398 of the Act (43 F.C.C.2d 851).

FCC Commission Wiley filed a concurring opinion; Commissioner Hooks dissented.

Pursuant to 28 U.S.C. 2342(1), Petitioner appealed the Commission's decision to the Court of Appeals for the District of Columbia Circuit. The Corporation for Public Broadcasting, the Public Broadcast Service, the University of Maine, and other parties, were permitted to intervene. The case was argued on April 14, 1975; the decision of the court below was entered on October 16, 1975. The decision of the FCC was affirmed. For "essentially the same reasons advanced by the Commission," the Court of Appeals concluded that the FCC does not have jurisdiction to enforce the mandate of Section 396 (g)(1)(A) against the CPB (521 F.2d 288, 291).

REASONS FOR GRANTING THE WRIT

The decision of the Court of Appeals is in direct conflict with the provisions and clear legislative intent of Section 396 (g)(1)(A) of the Communications Act of 1934, as amended.

The Court of Appeals has decided an important question of federal law which has not been, but should be settled by this Court. This is the first case involving an interpretation of Section 396 (g)(1)(A) of the Communications Act. It is also, so far as Petitioner is aware, the first case which raises the issue of the legal accountability of the Corporation for Public Broadcasting for compliance with the Public Broadcasting Act of 1967.

The decision below, moreover, is in conflict with the principles of broadcast regulation established by this Court in *F.C.C. v. Pottsville Broadcasting Co.*, 309 U.S. 134 (1940); *U.S. v. Southwestern Cable Co.*, 392 U.S. 157 (1968); and *Red Lion Broadcasting Co. v. F.C.C.*, 395 U.S. 369 (1969).

I. The Court of Appeals's Decision is in Direct Conflict with the Provisions and Clear Legislative Intent of Section 396 (g)(1)(A) of the Communications Act.

Section 396 was added to the Communications Act by the Public Broadcasting Act of 1967. It is this section which creates the Corporation for Public Broadcasting and delineates its powers and functions. The various subsections of section 396, among other things, authorize the establishment of the Corporation (§ 396(b)), specify the method for the selection of its board of directors (§ 396(c)(1)), prohibit the Corporation from contributing to or otherwise supporting any political party or candidate for public office (§ 396(f)(3)), and qualify the Corporation's authorization to fund programming activities (§ 396(g)(1)(A)).

It was one of the contentions of Petitioner when it originally brought its two complaints to the FCC that the Corporation had not complied with the mandate of Section 396 (g)(1)(A) with respect to the programs in question. The central activity of the Corporation is the support of programming; this is carried out, in large part, with public funds appropriated to CPB. The Congress quite properly circumscribed the authority of the Corporation to support programming activities, a fact which the court below seems to concede in its opinion:

> Section 396 (g)(1)(A) is part of the Public Broadcasting Act of 1967, an act which created the Corporation for Public Broadcasting (CPB) and authorized it to fund various programming activities. . . . *Section 396 (g)(1)(A) qualifies that authorization in the following language:*
>
> > In order to achieve the objectives and to carry out the purposes of this subpart, as set out in subsection (a) of this section, the Corporation is authorized to—
> >
> > > (A) facilitate the full development of educational broadcasting in which programs of high quality, obtained from diverse sources, will be made available to noncommercial educational television or radio broadcast stations, *with strict adherence to objectivity and balance in all programs or series of programs of a controversial nature.* (521 F.2d at 290, emphasis supplied)

Having specifically described the Corporation's authorization to support controversial issue programming, it is Petitioner's contention that the Congress—by necessary inference—has prohibited the CPB from supporting such programming which fails to meet the "objectivity and balance" standard. The legislative history of Section 396 (g)(1)(A) makes this Congressional intent abundantly clear (see below). The Court of Appeals seems to have conceeded this point as well:

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> Since [Section 396 (g)(1)(A)] is clearly directed to the Corporation and its programming activities, we have no doubt that the Corporation must respect the mandate of the Section. (521 F.2d at 292)

The Court of Appeals then went on, however, to nullify the regulatory enforceability of the Section:

> [W]e conclude that nothing in the language and legislative history of the Federal Communications Act or the Public Broadcasting Act of 1967 authorizes the FCC to enforce that mandate against the CPB. (Id.)

Elsewhere in its opinion, the court below refers to the section as containing "hortatory language," (521 F.2d at 297). The Court of Appeals has thus dealt with the section as though it were something in the nature of a Congressional suggestion rather than an amendment to the Communications Act of 1934. Long established principles of statutory construction, and the legislative history of Section 396 (g)(1)(A) preclude such an interpretation.

It is significant that, in its discussion of the legislative history of Section 396 (g)(1)(A), the Court of Appeals failed to refer to or quote from the single most relevant portion of that legislative history, the Conference Report which specifically discussed the section. The Report (H.Rept. No. 794, 90th Cong., 1st sess.) reflects the considered legislative intent that the Section is to be an enforceable obligation of the Corporation:

> These provisions [which prohibit editorializing and support or opposition for political candidates] are consistent with the *requirements* of section 396 (g)(1)(A) of the Communications Act of 1934 (which would be added by the conference substitute) which *require* that programs or series of programs of a controversial nature which are made available to the Public Broadcasting Corporation

must adhere strictly to objectivity and balance. (page 12, emphasis supplied)

* * * * * *

Under both the Senate bill and the House amendment the Public Broadcasting Corporation is authorized to "facilitate the full development of educational broadcasting in which programs of high quality, obtained from diverse sources, will be made available to noncommercial educational television and radio stations". The House amendment provides, in addition, that in the case of programs of a controversial nature there must be strict adherence to objectivity and balance. The conference substitute adopts these provisions of the House amendment with a modification so as to make the requirement more flexible. As so modified each program in a series need not meet the test of objectivity and balance, but the series, when considered as a whole, must. (page 13)

A further indication of the legislative intent that Section 396 (g)(1)(A), and indeed Section 396 in its entirety, be enforceable against CPB is the fact that the Congress deliberately chose to create the Corporation, and to define its authority, as an integral part of the pre-existing regulatory structure embodied in the Communications Act. As a result, Commission enforcement is required by the unequivocal language of Section 1 of the Act (47 U.S.C. § 151), which established the FCC and provided that it "shall execute and enforce the provisions of this chapter." Similarly, Section 312(b) of the Act authorizes the FCC to issue cease and desist orders to "any person" who "has violated or failed to observe any of the provisions of this chapter."

There is nothing in the language of Section 396, which created the Corporation and placed limitations on its authority, or in the legislative history, to suggest that the Congress intended Section 396, or any subsection thereof, to be exempt from the

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overall effect of Sections 151 and 312, which, by their express terms, apply to all provisions of the Act. On the Contrary, Congress stated in Section 398 of the Act:

> Nothing contained in sections 390-399 of this title shall be deemed . . . to amend any other provision of, or requirement under this chapter. (47 U.S.C. 398)

Furthermore, subsection (b) of Section 396—which created the CPB—clearly states that the Corporation "shall be subject to the provisions of this section," (47 U.S.C. 396(b)).

In the decisions below, both the FCC and the Court of Appeals seized upon certain language of Section 398 of the Act as relieving the Commission of jurisdiction to enforce Section 396 (g)(1)(A). Section 398 reads as follows:

> Nothing contained in sections 390-399 of this title shall be deemed (1) to amend any other provision of, or requirement under this chapter; or (2) to authorize any department agency, officer, or employee of the United States to exercise any direction, supervision, or control over educational television broadcasting, or over the Corporation or any of its grantees or contractors, or over the charter or bylaws of the Corporation, or over the curriculum, program of instruction, or personnel of any educational institution, school system, or educational broadcasting station or system. (47 U.S.C. 398)

The Court of Appeals reasoned as follows:

> Since the FCC is obviously an "agency . . . of the United States" and since any enforcement of § 396(g)(1)(A) would necessarily entail "supervision" of the Corporation, the plain words of subsection (2) preclude FCC jurisdiction. (521 F.2d at 292)

Petitioner notes preliminarily that Section 398 refers only to "sections 390-399 of this title", and that FCC jurisdiction is independently conferred by sections 151 and 312(b) of the Act, which section 398 by its express terms does not amend.

But the Court of Appeals has fallen into a more basic error. The caution against "direction, supervision, or control" contained in Section 398 does not relate solely to the Corporation for Public Broadcasting. That language is also made to apply to "educational television broadcasting" in general, and to others as well. Therefore, if Section 398 is held to "preclude FCC jurisdiction" to enforce Sections 390 through 399 with respect to the CPB, it must logically be held to have the same effect with respect to "educational television broadcasting" in general, including individual noncommercial broadcasting stations.

But Section 399 expressly provides that the FCC shall enforce its provisions, which, among other things, prohibit noncommercial educational broadcasting stations from editorializing or supporting political candidates. Noting this, the Court of Appeals asserted that Section 399 of the Act is "contrary" to Section 398 of the Act:

> Section 399 of the 1967 Act . . . is contrary to the § 398 prohibition in that it mandates "supervision" of noncommercial licenses and contemplates FCC enforcement. (521 F.2d at 292)

Petitioner submits that the Court of Appeals has erroneously equated regulatory enforcement of a validly enacted statute, Section 396 (g)(1)(A), with "direction, supervision, or control" as those terms are used in Section 398. This departure from prudent statutory construction has led the court below to attribute internal inconsistencies to Sections 398 and Sections 396 (g)(1)(A), 399, 151, and 312(b) of the Communications Act. In his dissent from the FCC's decision of November 15, 1973, FCC Commissioner Hooks correctly stated:

> [T]he inescapable language of the Communications Act empowers the Commission to "execute and enforce the provisions of this Act", of which Section 396 *et seq.* is an incorporated part. If there is a patent ambiguity arising out of the language of Section 398, the ambiguity should be resolved along the customarily prudent rules of statutory construction; *viz.*, in *pari materia* with the entire Communications Act (and the comprehensive regulatory scheme established thereby) with preponderant attention to the unequivocal edict of Section 1 of the Act that the Commission "administer and enforce" the Act, Section 396 included. And, unless it is assumed that it is the primary purpose of Congressional law to disrupt and confound the activities of the populace, it cannot be reasonably argued that administration and enforcement of a duly adopted statute (Section 396, for example) is the type of "interference" intendedly proscribed by Section 398; the proposition that equitable administration of federal law is coextensive with "direction, supervision or control" (47 U.S.C. §398) is, on its face, uniquely cynical. Hence, I find the apparent conflict between Sections 1 and 398 of the Communications Act illusory rather than real and our administration of those portions of the Act pertaining to CPB wholly consistent with law. (Dissenting statement of FCC Commissioner Hooks, footnotes omitted. See App. p 10a.)

As interpreted by the FCC and the Court of Appeals, Section 396 (g)(1)(A) of the Communications Act has been deprived of its status as enacted law entitled to regulatory enforcement. It has been transformed into a mere "hortatory" formula (521 F.2d at 297). Moreover, the decisions below jeopardize the other sensitive subsections of Section 396, which carefully circumscribe the permissible limit of CPB activities. As a result, the public will have no administrative forum in which to call the Corporation to account.

In the case of *Office of Communication of United Church of Christ v. F.C.C.*, 359 F.2d 994 (D.C.Cir. 1966), the decision of Judge Burger, now Chief Justice of this Court, quoted with approval from a report of the House Committee on Interstate and Foreign Commerce, as follows:

> Under our system, the interests of the public are dominant. . . . *Hence, individual citizens and the communities they compose owe a duty to themselves and their peers to take an active interest in the scope and quality of the television service* which stations and networks provide and which, undoubtedly, has a *vast impact on their lives and the lives of their children.* Nor need the public feel that in taking a hand in broadcasting they are unduly interfering in the private business affairs of others. On the contrary, *their interest in television programming is direct* and their responsibilities important. *They are the owners* of the channels of television—indeed, of all broadcasting. (359 F.2d at 1003; emphasis in original)

The above principles apply with at least equal force to the Corporation for Public Broadcasting whose activities involve not only the public airwaves but the public treasury as well.

In his concurring opinion in the case of *Columbia Broadcasting System, Inc. v. Democratic National Committee*, 412 U.S. 94 (1973) Mr. Justice Douglas commented on the unique status of the Corporation for Public Broadcasting, distinguishing it from private broadcast licensees:

> Public broadcasting, of course, raises quite different problems from those tendered by the TV outlets involved in this litigation.
>
> Congress has authorized the creation of the Corporation for Public Broadcasting, whose Board of Directors is appointed by the President by and with the advice and

> consent of the Senate. 47 U.S.C. §396. . . . It is a non-profit organization and by the terms of §396(b) is said not to be "an agency or establishment of the United States Government." Yet, since it is a creature of Congress whose management is in the hands of a Board named by the President and approved by the Senate, it is difficult to see why it is not a federal agency engaged in operating a "press" as that word is used in the First Amendment. If these cases involved that Corporation, we would have a situation comparable to that in which the United States owns and manages a prestigious newspaper like the New York Times, Washington Post, and Sacramento Bee. The government as owner and manager would not, as I see it, be free to pick and choose such news items as it desired. For by the First Amendment it may not censor or enact or enforce any other "law" abridging freedom of the press. Politics, ideological slants, rightist or leftist tendencies could play no part in its design of programs. (412 U.S. at 149)

It was, in fact, the clear and obvious legislative intent of the Congress in creating the Corporation that "politics, ideological slants, rightist or leftist tendencies" would play no part in its design or support of programs. It was for this reason that the Congress provided, in Section 396 (g)(1)(A), that the Corporation's programming activities must strictly adhere to "objectivity and balance in all programs or series of programs of a controversial nature."

It is clear that the Court of Appeals was hostile to the Congressional limitation placed on the authorization given to the CPB to support controversial issue programming. The constitutionality of Section 396 (g)(1)(A) is not at issue in this proceeding; the Court of appeals, however, concluded its decision with a lengthy discussion of its "constitutional misgivings" concerning the section (521 F.2d at 297).

Petitioner recognizes that the interpretation and application

of Section 396 (g)(1)(A) might well raise constitutional issues, and is prepared to defend the constitutionality of the section. The Petitioner's complaints against CPB, insofar as they were based on Section 396 (g)(1)(A), have been circumvented by the erroneous decisions below. These decisions have held that the Congress did not intend the FCC to have jurisdiction to enforce the section, notwithstanding its deliberate incorporation into the Communications Act of 1934, whose provisions the Commission is directed to "execute and enforce" (47 U.S.C. 151). The result has been to prevent the statute from being applied and tested through the appropriate administrative and judicial processes.

II. The Court of Appeals' Decision is in Conflict with the Principles of Broadcast Regulation Established by This Court in *F.C.C. v. Pottsville Broadcasting Co.*, 309 U.S. 134 (1940); *U.S. v. Southwestern Cable Co.*, 392 U.S. 157 (1968); and *Red Lion Broadcasting Co. v. F.C.C.*, 395 U.S. 369 (1969).

From its inception in the Radio Act of 1927, broadcast regulation in the United States has been entrusted to an expert bipartisan and independent Commission. The Senate Report which accompanied the bill that became the Radio Act of 1927 (44 Stat. 1162) stated:

> [Y]our committee decided that all power to regulate radio communication should be centered in one independent body, a radio commission, granting it full and complete authority over the entire subject of radio. (S.Rep. 772, 69th Cong., 1st sess., p.3)

The Communications Act of 1934, which replaced the Radio Act, has retained the principle embodied in the above-quoted language. Central to the whole scheme of broadcast regulation is the "public interest, convenience, or necessity" standard contained in Section 307 of the Act (47 U.S.C. 307). This Court

has stated that the standard is "as concrete as the complicated factors for judgment in such a field of delegated authority permit." *F.C.C. v. Pottsville Broadcasting Co.*, 309 U.S. 134 (1940), at page 138. Like Section 307, Section 396 (g)(1)(A) of the Act is not self-defining. It has been the consistent position of this Court, however, that the interpretation and application of the provisions of the Communications Act are "explicitly and by implication left to the Commission's own devising," and that the Commission is "the expert body which Congress has charged to carry out its legislative policy." *Pottsville, supra*, at p. 138.

That principle was reaffirmed by this Court in *U.S. v. Southwestern Cable Co.*, 392 U.S. 157 (1968), wherein this Court held that the FCC had jurisdiction over cable television despite the fact that such jurisdiction was not explicitly mentioned in the Act (see 392 U.S. at 172-73). In *Southwestern*, this Court reaffirmed the broad expanse of the FCC's jurisdictional responsibilities:

> The Commission was expected to serve as the "single Government agency" with "unified jurisdiction" and "regulatory power over all forms of electrical communication, whether by telephone, telegraph, cable, or radio." It was for this purpose given"broad authority." As this Court emphasized in an earlier case, the Act's terms, purposes, and history all indicate that Congress "formulated a unified and comprehensive regulatory system for the [broadcasting] industry." (citing *Pottsville, supra)*

Finally, in *Red Lion Broadcasting Co. v. F.C.C.*, 395 U.S. 367 (1969), this Court upheld the Commission's authority to apply the Fairness Doctrine. The Court stated:

> [T]he people as a whole retain their interest in free speech by radio and their collective right to have the medium function consistently with the ends and purposes

> of the First Amendment. It is the right of the viewers and listeners, not the right of the broadcasters, which is paramount. . . . (395 U.S. at 390)

The legislative history of the Communications Act, and this Court's decisions over the years' have established the principle that the FCC is the chosen instrument by which Congress sought to obtain a cohesive, expert, and nonpartisan regulatory policy.

The decision of the Court of Appeals, however, would remove sensitive provisions of the Communications Act from the jurisdiction of the Commission. The decision of the Court of Appeals rests on the paradoxical assertion that the Congress intended to insure the "independence" of the CPB by itself exercising direct control over its operations:

> Ultimately, Congress may show its disapproval through the appropriation process. . . . Through these statutory requirements and control over the 'purse-strings,' Congress reserved for itself the oversight responsibility for the Corporation. (521 F.2d at 294)

Thus, despite this Court's holding in *Pottsville Broadcasting* that the FCC has the responsibility and jurisdiction, in the first instance at least, to interpret and apply the provisions of the Act, the Court of Appeals has held that certain provisions of the Act lie outside the Commission's jurisdiction. Despite the holding in *Southwestern Cable, supra*, that the FCC's jurisdiction is sufficiently unified and broad to reach an entity, cable television, not specifically mentioned in the Act, the Court of Appeals has held that the Commission's jurisdiction does not reach an entity, the Corporation for Public Broadcasting, specifically created by the Act. Despite the teaching of *Red Lion* that rights of the public are paramount, the public has been left without an administrative forum in which to call the CPB to account for violations of the Act.

If the decisions below are allowed to stand, sensitive regulatory issues concerning the programming sponsored by the CPB will not be addressed through the appropriate administrative and judicial review procedures mandated by the Congress. Such issues, if addressed at all, will be disposed of through the completely inappropriate Congressional appropriations process. Petitioner endorses the following observations of dissenting FCC Commissioner Hooks on these points:

> There are in the larger sense, however, other more compelling (if not more cogent) reasons why the Commission is the proper body to ensure CPB's compliance with the Communications Act. Inasmuch as it is obvious that *somebody* must administer those laws relating to CPB, it is my contention that the Commission, an independent, bi-partisan regulatory agency, whose members are appointed by the President with the advice and consent of the Senate, and whose actions are subject to established, reasonably expeditious review by the judicial and legislative branches of government, is the most appropriate entity to handle the task. In addition to the foregoing properties, the Commission—with all attendant faults and errors—executes the difficult and sensitive regulation of broadcasting on a day-to-day basis and, I believe, has evolved a better "feel" (for lack of a more precise characterization) for such matters than any other existing body.
>
> While I suppose that an aggrieved party could refer alleged violations of Section 396 to the Department of Justice for prosecution, that places the Executive Branch of government in "control of codified CPB activities. This not only leaves room, theoretically, for partisan application but limits the usefulness of the doctrine of primary jurisdiction of an adminstrative agency under which initial claims can receive thorough consideration.
>
> On the other hand with all due deference to the Senator who suggested that Congress could control CPB through its

> appropriations function, "purse-string" power is far from the most appropriate or effective manner of administering delicately etched law. . . . "Purse-string" power, especially in the case of multi-year appropriations, is likely to mean too little (or too much) too late; it lacks the flexibility required to fashion adequate resolutions and the public—whose funds and frequencies are involved—has no significant entree into Congressional budgetary proceedings while it is accustomed to, and regularly does, direct its inquiries and grievances about noncommercial broadcasting to the Commission, as witness the instant complaint. Consequently, abjuration in the instant matter has effectively deprived any complainant of a forum wherein the matter of possible violations can be thoroughly considered and adjudicated. To my way of thinking, that result is manifestly unsatisfactory. (Dissenting opinion of FCC Commissioner Hooks, See App. p. 10a.)

CONCLUSION

For the reasons stated, the petition for writ of certiorari should be granted.

Respectfully submitted,

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